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SIPDIS

SENSITIVE

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SUBJECT: BRAZIL: SERVICES HELD HOSTAGE TO AGRICULTURE

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SENSITIVE BUT UNCLASSIFIED

1. (U) Econoff met on March 12 with Felipe Hees of the Services, Investment and Financial Issues Division of Itamaraty to discuss prospects for Brazil's submission of services offers in the WTO (reftel) and FTAA negotiations.

WTO - Submission by Deadline Is Doubtful

2. (U) Although Hees stressed that a final decision has not been made, he confirmed reports that Brazil may not submit a WTO services offer by March 31. The hold-up would not be technical. Echoing comments made by Brazilian negotiators in Geneva, Hees explained that the GOB is considering the tactical pros and cons of withholding its services offer to protest what it views as a lack of progress in areas of vital interest for Brazil. The most important of these areas is agriculture, and the GOB sees little prospect that modalities for the agriculture negotiations will be agreed to by the March 31 deadline. Hees laid blame for the difficulties in the agriculture negotiations squarely on the European Union (EU). Econoff noted USG concerns that momentum for the Doha Development Agenda (DDA) may unravel if a mounting number of benchmarks are missed, but Hees responded that without movement by the EU in agriculture, the DDA is dead anyway. In discussions with Ambassador on March 17, Foreign Minister Amorim suggested that if Brazil does submit a services offer by March 31, it will be modest.

3. (U) While Brazil's principal focus is agriculture, Hees claimed that missed deadlines in other sensitive areas (TRIPS and Public Health, Special and Differential Treatment), and low expectations for results on rules (antidumping, etc.) all make it extremely difficult for the GOB to domestically defend moving forward in negotiating areas where its posture is more "defensive." He restated the GOB position that all areas of the DDA must progress together, rejecting as improbable that a satisfactory agreement would result if evaluation of the negotiations as a single-undertaking only transpires at the end of the process.

FTAA - Services Lever

4. (SBU) The GOB has already decided to use its services offer within the FTAA as a tactical lever. According to Hees, the GOB had prepared its offer for the February 15 deadline, but it was withheld at the last minute by order of Foreign Minister Amorim, with the acquiescence of President Lula. While claiming that he is not privy to Minister Amorim's reasoning, Hees said he understood from conversations within the Ministry that the decision was a reaction to disappointment with other aspects of the FTAA negotiations. In particular, he noted the GOB's very negative reaction to Canada's market access offers for goods, because it excluded 97 agricultural products, including many key Brazilian exports.
GOB Demands Respect

5. (U) Leaving aside Brazil's decision to delay submission of its offer, Hees used the opportunity to express frustration with the U.S. approach in FTAA services negotiations. His core accusation was that discussions between the U.S. and Mercosul delegations are less than frank, within plenary as well as within bilateral meetings. He was particularly vexed by what he portrayed as a lack of forthrightness in the way the initial U.S. services offer was characterized in Panama. According to Hees, the U.S. delegation described the U.S. offer in plenary as covering "all levels of the USG," but that after reading the text, the Mercosul delegation concluded that it does not. To illustrate, Hees cited an exception given in Annex 1 (p.17) that allowed all sub-federal levels of government to enact legislation that did not accord national treatment. By his read, this means that any state within the United States would be able to enact legislation that discriminates against Brazilian service providers, without violating USG commitments. Hees said the GOB recognizes that the U.S. government structure poses challenges for devising services commitments; he

suggested that the GOB would display more understanding regarding this difficulty, if the exchanges between the U.S. and Mercosul delegations would be more candid. He also claimed that information provided on U.S. willingness to negotiate Mode 4 concessions was misleading. Hees stressed that more candid exchanges between the delegations could reduce friction and help move the negotiations forward through productive dialog.

16. (U) Hees also termed the U.S. "mantra" that offers be constructed as "negative" lists as a source of friction. Hees claimed that the GOB has not yet rejected the possibility of using a negative list. However, he asserted that the U.S. delegation's insistence that the negative list approach be adopted, without the benefit of a substantive discussion of the pros and cons of other approaches, forces Brazil to react defensively, taking a similarly rigid stance in favor of a positive list. More or less, Hees said that Brazil has to be convinced) not told -- that a negative list approach is better. He noted that Peru and Colombia had constructed their offers in yet different ways and thought these approaches might also have something to offer to the debate.

17. (U) Hees argued that the premise that a negative list provides for more comprehensive commitments is basically flawed, noting that some negative list offers submitted by FTAA countries were far from comprehensive) the devil being in the details of the annexes) including for future services. Countries intent on liberalizing can do so under either approach, just as countries can also opt for keeping their markets closed, he opined. Furthermore, he claimed that a negative list, at least according to the U.S. offer, provides less, not more, specificity regarding restrictions. He noted an annex entry covering "all sectors," which identified applicable U.S. laws, but without indicating how the laws would affect provision of the services in the sector; there was no mention of the specific subsectors or modes affected. Expanding on this, Hees argued that there is also real value to sticking to a system (GATS) that government officials throughout the hemisphere now know how to read and use, pointing out that they will have to be able to explain to their exporters in detail what services openings and restrictions they will face.

18. (U) In a final note, Hees asked that due respect be given to Brazil considering the extent to which services have already been liberalized in the country. Hees complained that the U.S. appears to approach Brazil much in the same way as it approaches countries with closed services sectors, he presumes because constitutional difficulties prevented ratification of Brazil's GATS commitments. He suggested that acknowledgment of Brazil's current openness would create a more positive environment for Brazil to consider requests for improving access.

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